

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LEE MAX BARNETT,

Petitioner,

vs.

ROBERT WONG, Warden,

Respondent.

No. CIV S-99-2416 DFL CMK DP

DEATH PENALTY CASE

ORDER

By order filed December 6, 2006, the court set forth a briefing schedule for respondent's motion to dismiss. Respondent's motion to dismiss, if any, is due on or before May 29, 2007.<sup>1</sup> Petitioner's response is due on or before July 20, 2007, and a reply is due on or before August 24, 2007. Currently, findings and recommendations filed by the court recommending that Petitioner's motion for a declaration that AEDPA does not apply in the instant action are pending before the Honorable David F. Levi.

<sup>1</sup>There is a disparity in the court's orders. One order states that the motion to dismiss is due on or before May 25, 2007 (doc. 209) another states that the motion to dismiss is due on or before May 27, 2007. May 27, 2007 is a Sunday, and May 28, 2007 is a federal holiday. Accordingly, to avoid any confusion or any prejudice to respondent due to the disparity, the court re-sets the date for any motion to dismiss to be filed as May 29, 2007.

1 In light of this, the court will not set a hearing date for the motion to dismiss at this  
2 time. Instead, the court will set a case management conference for September 18, 2007 at which  
3 the court will discuss, among other things, setting a date for oral argument on any motion to  
4 dismiss filed by respondent and any other issues which have arisen in the instant action.

5 IT IS ORDERED that:

6 1. Respondent's motion to dismiss shall be filed on or before May 29, 2007.

7 2. The court will hold a case management conference in this matter at 10:00 a.m.  
8 on September 18, 2007 before the undersigned at the United States District Court in Redding,  
9 California. The parties are advised that telephonic appearances are permitted.

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11 DATED: May 15, 2007.

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14 **CRAIG M. KELLISON**  
15 UNITED STATES MAGISTRATE JUDGE  
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